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FOR THE DISTRICT OF SOUTH CAROLINA

2009 MAY 20 A 10:38

Beaufort Thomas,)	C.A. No. 2:09-0090-CMC-RSC
)	
Plaintiff,)	
)	
-versus-)	<u>REPORT AND RECOMMENDATION</u>
)	
Deputy Dewayne McFadden (WCSD);)	
Officer Patrick (WCDC);)	
Sgt. (FNU) Gamble (WCDC);)	
Chief (FNU) Brown (WCDC);)	
Officer Thomas Williams (WCDC),)	
)	
Defendants.)	

The pro se plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On March 18, 2009, the defendant Officer Patrick filed a motion to dismiss. By order of this court filed March 23, 2009, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding pro se, the court filed a second order on April 28, 2009, giving the plaintiff an additional ten (10) days in which to file his response to the defendant Officer Patrick's motion to dismiss. The plaintiff was specifically advised that if he failed to respond, this action

may be dismissed as to Officer Patrick with prejudice for failure to prosecute, Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978), 41(b) Federal Rules of Civil Procedure. The plaintiff did not respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action as to Officer Patrick. Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution as to Officer Patrick.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert S. Carr".

Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

May 19, 2009

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).